

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 336 of 1981

In

SPECIAL CIVIL APPLICATION NO. 3465 OF 1981

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ELLIAS AHMAD, SINCE DECEASED THROUGH HIS HEIRS & LEGAL R.

Versus

SUPERINTENDENT AHMEDABAD CENTRAL PRISON

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Appearance:

MR SB NANAVATI for Appellants

M/S MG DOSHIT & CO for Respondent No. 1

MR AMIT M PANCHAL for Respondent No. 2, 3

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CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

Date of decision: 02/11/98

ORAL JUDGEMENT [ PER : B.C. PATEL, J ]

The appellant herein has preferred this appeal

under Clause:15 of the Letters Patent against the order of rejection of Spl.Civil Application No. 3465/81 on 23.10.1981 by the learned Single Judge of this Court. However, the Court permitted the appellant to occupy the quarter till 31.12.1981. The proceedings were initiated under the following circumstances:

The appellant, by the order dated 6.5.1980 was declared invalid. It appears that Spl.Civil application No. 2129/80 was preferred by the present appellant and on 27.8.1980, the Court passed the order as under :-

" In view of the fact that the impugned order at Annexure : "A" has been withdrawn for the purpose of enabling the petitioner to appeal to the Medical Appeal Board, Mr. Hamid Quareshi withdraws the petition. The petitioner has stated to the court that he will prefer the appeal to the Medical Appeal Board within a period of two weeks from today, it will be competent to the authorities to take appropriate action."

It appears that thereafter the appellant preferred appeal and on 19.6.1981, vide Annexure:D, appeal was rejected by the Medical Appeal Board. Along with the said order, office order dated 18.6.1981 was also forwarded to the appellant which has not been annexed with the petition. It appears that on 10.8.1981, vide Annexure:G, the petitioner submitted to the I.G. (Prisons) that the appeal was rejected on 7.5.1981 (should be 18.6.1981) by the Medical Appeal Board and he is declared invalid w.e.f. 6.5.1980 and was required to vacate the quarter. It is stated in the said letter that he was admitted in the hospital and after operation, he was fit to attend the duty. He further requested for time to vacate the quarter. In the said letter, he has submitted that he was taking treatment in VS Hospital.

It appears that vide Annexure:F, the petitioner was informed that Medical Appeal Board has taken the decision and, therefore, there was no question of taking him back in service.

It appears that in view of the order passed in Civil Application No. 4172/81 in LPA, the appellant was directed to be examined by the Supdt. of TB Hospital at Ahmedabad. The said order dated 11.2.1982 reads as under:-

" By way of interim order, we direct that the petitioner shall be examined by the

Superintendent of T.B.Hospital at Ahmedabad personally and he shall make a report to this court after a thorough examination as to the present state of the disease (T.B.) and whether the petitioner can discharge his functions as a teacher. The report shall be submitted to us on or before 25th February, 1982. The matter shall stand adjourned to 26th February, 1982.

A copy of this order shall be sent directly to the Superintendent of the T.B. Hospital directly. One copy shall be handed over to petitioner so as to enable him to present himself before the Superintendent and obtain appointment for being examined. Order accordingly."

Mr. Nanavati, learned counsel appearing for the appellant submitted that thereafter the Division Bench, on 6.5.1982, on perusal of the certificate, by way of interim order, permitted the petitioner to report for

duty w.e.f. 14.5.1982. The Court has further directed that in case respondents fail to provide the petitioner with any work, the petitioner will be treated as having been posted for duty on May 14, 1982 and he will be paid salary from that date onwards. On inquiry, Mr. Nanavati placed before us the zerox copy of the certificate issued by Ahmedabad Municipal Corporation ( Sheth Motilal Harilal Jagabhaiwala Chest Clinic ) dated 22.2.1982 indicating that the appellant was taking treatment as an outdoor patient w.e.f. 15.2.1981. From the certificate, it appears that he was suffering from Old Pul.T.B. with Diabetes and was advised light duty for one month from 20.2.1982 to 19.3.1982. The certificate further reveals that he was fit to resume light duty from 20.2.1982. He was also advised to continue regular anti-TB and anti-diabetes treatment and checking every month. Mr. Nanavati stated that on the basis of this certificate, the appellant was permitted to resume duty. We inquired from Mr. Nanavati as to whether there is any certificate indicating that the appellant was declared fit to resume duty after 19.3.1982 to which he has answered that no such certificate is with him and to our surprise, no such certificate is produced on record of the case. Mr. Nanavati submitted that one Dr. Dalal issued a certificate at Annex.E. We reproduce the relevant portion of the said certificate (it is difficult to correctly read the said certificate) which reads as under:-

" This is to state that Shri Iliyasahmed

Asagarali was suffering from Pncuma Chorax Diabetic meth, I T.B.Hungs and was under medical treatment. Now, he can resume his duties."

However, we have to consider the certificate issued by the Medical Officer of Ahmedabad Municipal Corporation ( Sheth Motilal Harilal Jagabhaiwala Chest Clinic ) Ahmedabad and reading that certificate, it appears that the appellant was only permitted to do light work for a period of one month viz. from 20.2.1982 to 19.3.1982 and he was advised to continue regular treatment and regular check-up. Except this certificate, no other certificates are produced on record till this date to show that the appellant was fit to resume duty after 19.3.1982. However, he continued in service in view of the order passed by the court. The Court was anxious to know whether he can work as a teacher or not but to our surprise, nothing is stated in the certificate about the same.

It appears that thereafter oral request was made to the Court as the question of retirement benefits including pension etc. were not decided. Mr. Nanavati submitted that the petitioner died on 20.4.1986 while in service and thereafter as per the order passed by this court, benefits have been given. It is also further stated before us that on account of death of the appellant, son of the appellant was given appointment on compassionate ground.

In absence of certificate disclosing fitness of the appellant after 19.3.1982, it would be very difficult for us to say whether the decision given by the Medical

Appeal Board can be said to be a decision contrary to record. There may be difference of opinion by two experts, but the Board appointed under the relevant rules, after examining the appellant, took the decision as aforesaid. Medical Officer has opined that continuous treatment was required and he can be given light work only. It is required to be noted that the decision of the Medical Appeal Board is not challenged. In para-6 of the petition, it is stated that he was admitted in VS Hospital on 25.8.1980 and was operated on 26.8.1980 and was discharged on 8.9.1980. He was advised rest upto 11.2.1981. Certificate dated 14.2.1981 issued by VS General Hospital reveals that he was treated for Pulm.Koch. and was advised only light work. No certificate is produced thereafter to show that the petitioner was fit to discharge his duties as a teacher. However, in view of the order passed by the court, he was taken in service and he was given all the benefits.

It is required to be noted that subsequent to the

dismissal of Spl.Civil Application, the petitioner continued in service in view of the orders passed by the Court and in view of the subsequent development. Mr. Nanavati submitted that he should be given benefit of continuity of service and fixation of salary is required to be reconsidered. Suffice it to say that on record no medical certificates are produced to show that he was fit to resume duties after 19.3.1982. However, as he has worked after the order passed by the court, the benefits which he had gained cannot be disturbed even on the ground that the case has no merits. As the decision taken earlier was challenged before the Medical Appeal

Board and is confirmed and all these years the petitioner-appellant has got the benefits and on account of his death, compassionate appointment has been given to his son, we would not like to interfere in this matter. Hence, appeal stands dismissed. No orders as to costs.

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